



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

LVO/169865

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 02, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to a Levy, a telephonic hearing was held on December 03, 2015.

The issue for determination is whether the petitioner has exhausted her appeal rights concerning the child care overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Sheila Easley, CC Subsidy Specialist Sr.  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 15, 2003, the agency issued a Child Care (CC) Overpayment Notice to the petitioner informing her it had determined that she had been overpaid \$4184.50 in CCB benefits

in the period of 1/1/03-3/31/03 (claim # [REDACTED]). Petitioner appealed notice and a hearing was held on June 16, 2004.

3. On July 2, 2004 the Division of Hearings and Appeals issued Decision #CCO-61645 upholding the overpayment against the petitioner.
4. Since the time of the issuance of Decision #CCO-61645, the agency has recouped \$368 through a tax intercept against petitioner.
5. On September 23, 2015, the Department of Children and Families (DCF) issued a notice to the petitioner informing her that the DCF had acted to impose a levy against her in the total amount of \$3854.45, arising from the CCB overpayment and the collection costs for the levy.
6. On November 2, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals.

### **DISCUSSION**

Where an individual is subject to a specified overpayment of public assistance, a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Stat. §49.195; Wis. Admin. Code §DCF 101.23(4). A delinquent debt may be subject to warrant and execution under §49.195 (3m); levy under §49.195 (3n); setoff against a refund under §§49.85 and 71.93, Stats.; and other authorized collection methods. Wis. Admin. Code §DCF 101.23(8). A debt shall be considered delinquent if the department does not receive a debtor's payment by the due date 3 times over the life of the debt. Id.

Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under [ch. 227, Stats.](#), within 20 days from the date on the service of levy. In the instant case, the department has notified petitioner that it was pursuing a levy against the petitioner. The petitioner was able show that her appeal of the levy was timely as the agency had mailed it to her incorrect address of record.

The statutory provisions of import in this case are as follows:

Wis. Stat. §49.195(3n)(e), which states:

3. For purposes of an adjudication under this paragraph, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

Wis. Stat. §49.195(3n)(l), which states:

- (l) If no appeal or other proceeding for review permitted by law is pending and the time for taking an appeal or petitioning for review has expired, the department shall make a demand to the debtor for payment of the debt that is subject to levy and give notice that the department may pursue legal action for collection of the debt against the debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt. The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

Wis. Stat. §49.195(3n)(s), which states:

(s) Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under [ch. 227](#). The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal in any case where property is secured through the levy.

Petitioner has timely appealed the levy proceeding. However, at this hearing, petitioner wanted to contest the underlying overpayment again. The time for taking an appeal on the underlying overpayment has expired however and therefore this appeal must be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. Wis. Adm. Code §DCF 101.23(10)(c)(3).

Petitioner did not dispute that she is the individual subject to the overpayment determination in the instant case and did not deny that that some payment had been made on the debt. The evidence shows that that the agency properly seeks to recover that overpayment through the levy. Petitioner is reminded to update the agency with her correct address, if there is such a change, to avoid missing notices from the agency.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

1. There is no jurisdiction to consider the merits of the child care overpayment as the petitioner had an opportunity for a hearing on the matter and the overpayment was upheld in Decision #CCO-61645.
2. The levy is being applied against the correct individual and there is no evidence that the department is not pursuing the correct amount of the debt.
3. The department acted correctly in instituting levy proceedings against the petitioner since the petitioner has not already made a prior full payment of her child care overpayment.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of February, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 3, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit